

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:08CV78-01-MU

MICHAEL ROBERTS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
STATE OF NORTH CAROLINA, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court upon Plaintiff's Motion for Reconsideration for Appointment of Counsel (Doc. No. 47), filed January 26, 2009; and Plaintiff's Motion to Stay Summary Judgment (Doc. No.51), filed March 9, 2009.

Plaintiff requests that the Court reconsider his request that the Court provide him with court-appointed counsel to assist him in pursuing this case. As already stated, appointment of counsel under §1915(e)(1) in cases brought under 42 U.S.C. § 1983 is discretionary. Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984). Counsel should be appointed in "exceptional circumstances." Id.; Cook v. Bounds, 518 F.2d 779 (4th Cir. 1975). The existence of "exceptional circumstances" depends upon two factors: type and complexity of case and ability of pro se litigant to present case. Whisenant, 739 F.2d at 163. At this time, the Plaintiff is adequately representing himself and his Motion to Reconsider is denied. If the Court determines that Plaintiff's circumstances become exceptional," the Court will appoint him counsel on its own motion.

Plaintiff has also filed a motion asking this Court to stay summary judgment. Plaintiff's

request is predicated on his pending Motion for Reconsideration for Appointment of Counsel. As this motion is denied, Plaintiff's motion becomes moot. This Court will however, extend Plaintiff's time to respond to Defendants' Motion for Summary Judgment to and including April 10, 2009.

**THE COURT HEREBY ORDERS** that:

1. Plaintiff's for Reconsideration for Appointment of Counsel is **DENIED**; and
  2. Plaintiff's Motion to Stay Summary Judgment is **DENIED** and Plaintiff's time to respond to Defendants' Motion for Summary Judgment is extended up to and including April 10, 2009..
- Plaintiff is warned that failure to timely respond to the Motion for Summary Judgment may result in the dismissal of his Complaint.

Signed: March 11, 2009

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

